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CITATIONS

272145—40

In the Supreme Court of the United States

October Term, 1940

No. 501

Cap Andrew Tilles, petitioner

v.

Guy T. Helvering, Commissioner of Internal Revenue

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 22–29) is reported in 38 B. T. A. 545. The opinion of the Circuit Court of Appeals (R. 62–76) is reported in 113 F. (2d) 907.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 24, 1940 (R. 76). A petition for a rehearing was denied on September 4, 1940 (R. 87). The petition for a writ of certiorari was filed on October 12, 1940. The jurisdiction of this

Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner and his former wife entered into an agreement whereby petitioner agreed to pay her $400 a month during the remainder of her life. The agreement further provided that petitioner should have the option of paying his wife $100,000 in cash in release of his obligation to make the monthly payment, and that if petitioner's wife survived him petitioner's estate should pay her $100,000 in release of the obligation. The question is whether petitioner's payments to his wife under this agreement are deductible from his gross income as interest paid on indebtedness.

STATUTES INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791:

> SEC. 22. GROSS INCOME.
>
> (a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on

for gain or profit, or gains or profits and income derived from any source whatever.

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(b) *Interest.*—All interest paid or accrued within the taxable year on indebtedness, * * *.

These provisions also appear in the same sections of the Revenue Act of 1932, c. 209, 47 Stat. 169.

STATEMENT

The facts as stipulated (R. 39–52) may be summarized as follows:

In 1908 petitioner's wife, Mrs. Corinne L. Tilles, instituted suit for divorce against petitioner in the Circuit Court of the City of St. Louis, Missouri. Later in the same year she dismissed the suit (R. 39). The next year petitioner filed suit for divorce in the same court, and was granted an absolute divorce on June 10, 1909 (R. 39, 42).

During May 1909 petitioner and his wife entered into a written contract in the form of a letter, whereby petitioner agreed to pay his wife $400 per month during her life (R. 43). The agreement reserved to petitioner the option of paying to his wife $100,000 in cash in release of all other obligations under the contract, and also provided that if petitioner's wife survived him petitioner's estate

should pay her $100,000 in release of such obligations. Other provisions of the contract called for the pledge of certain designated stocks to secure the promised payments (R. 43).

During each of the years 1931 and 1932 petitioner paid to his former wife the sum of $4,800 under the terms of the agreement (R. 40). Petitioner claims the right to deduct these sums from his gross income. The Commissioner held these deductions improper and asserted deficiencies (R. 12). The Board of Tax Appeals (R. 25–27) and the Circuit Court of Appeals (R. 62, 76) both likewise held that the payments were not deductible.

ARGUMENT

1. Petitioner asserts that the court below misapplied *Douglas* v. *Willcuts*, 296 U. S. 1, for the reason that petitioner's payments to his wife were not in discharge of any obligation for her support imposed by law, but were made pursuant to a contract between petitioner and his wife. But, since petitioner himself received the moneys which he paid over to his wife, there is here no question whether income not actually received by petitioner may be attributed to him under the doctrine of *Douglas* v. *Willcuts*. The lower court's discussion of that and related decisions appears to be merely background for its holding, not challenged in the petition, that petitioner's pledge of stocks as se-

curity for his payments to his wife did not create a trust. See R. 72.

2. When petitioner agreed to pay his wife $400 monthly, he retained an option to discharge that obligation by paying $100,000 in a lump sum. And the agreement provided that if petitioner's wife survived him petitioner's estate should pay her $100,000 in discharge of the obligation. Petitioner asserts that in view of these facts his agreement with his wife should be viewed as the equivalent of a promissory note obligating him to pay interest monthly at the rate of 4.8 percent per annum, and that his payments to his wife are therefore deductible as interest on indebtedness under Section 23 of the Revenue Acts of 1928 and 1932. This contention is manifestly insubstantial and petitioner cites no authority in support of it. In essence, petitioner is simply seeking a deduction on account of payments made by him in the nature of alimony. But Article 281 of Treasury Regulations 77, construing Section 24 (a) (1) of the Revenue Act of 1932, which forbids deductions in respect of "personal * * * expenses", specifically states: "Alimony and an allowance paid under a separation agreement are not deductible from gross income."

CONCLUSION

The decision below presents no conflict or question of general importance. The petition should therefore be denied.

Respectfully submitted.

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